

# Calendar No. 533

115TH CONGRESS  
2D SESSION

# S. 440

To establish a procedure for the conveyance of certain Federal property around the Dickinson Reservoir in the State of North Dakota.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 17 (legislative day, FEBRUARY 16), 2017

Mr. HOEVEN (for himself and Ms. HEITKAMP) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

JULY 30, 2018

Reported by Ms. MURKOWSKI, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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# A BILL

To establish a procedure for the conveyance of certain Federal property around the Dickinson Reservoir in the State of North Dakota.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. PATTERSON LAKE LAND CONVEYANCES.**

4       (a) **DEFINITIONS.**—In this section:

5           (1) **DEPARTMENT.**—The term “Department”  
6       means Dickinson Parks & Recreation in Dickinson,

1       North Dakota (or a successor in interest to that en-  
2       tity).

3           (2) **DICKINSON RESERVOIR.**—The term “Dick-  
4       inson Reservoir” means the Dickinson Reservoir  
5       constructed as part of the Dickinson Unit, Heart  
6       Division, Pick-Sloan Missouri Basin Program, as au-  
7       thorized by section 9 of the Act of December 22,  
8       1944 (commonly known as the “Flood Control Act  
9       of 1944”) (58 Stat. 891, chapter 665).

10          (3) **PERMITTEE.**—The term “permittee” means  
11       the holder of a permit for a property.

12          (4) **PROPERTY.**—The term “property” means  
13       any one of the cabin sites located on Federal prop-  
14       erty around the Dickinson Reservoir for which a per-  
15       mit is in effect on the date of enactment of this Act.

16          (5) **SECRETARY.**—The term “Secretary” means  
17       the Secretary of the Interior, acting through the  
18       Commissioner of Reclamation.

19           (b) **PURCHASE OF PROPERTY BY PERMITTEE;**  
20 **TRANSFERS TO DEPARTMENT.**—

21           (1) **OPTION.**—The Secretary shall provide to  
22       the permittee of a property the first option to pur-  
23       chase that property in accordance with paragraph  
24       (3) for fair market value, subject to the condition  
25       that the permittee shall pay to the Department any

1 outstanding permit fees before the permittee may ex-  
2 ercise the option to purchase.

3           **(2) DETERMINATION OF FAIR MARKET  
4 VALUE.—**

5           **(A) IN GENERAL.**—For purposes of this  
6 subsection, the fair market value of a property  
7 shall be determined by a local, third-party ap-  
8 praiser, valuing the property as unimproved res-  
9 idential property, excluding all improvements.

10           **(B) DISPUTES.**—Any dispute regarding  
11 the fair market value of a property shall be re-  
12 solved in accordance with section 2201.4 of title  
13 43, Code of Federal Regulations (or successor  
14 regulations).

15           **(3) PURCHASE.—**

16           **(A) IN GENERAL.**—On an election by a  
17 permittee to exercise the option to purchase a  
18 property pursuant to paragraph (1), the Sec-  
19 retary shall convey to the permittee, for fair  
20 market value—

21                   (i) all right, title, and interest of the  
22 United States in and to the property, sub-  
23 ject to valid existing rights; and

24                   (ii) easements for—

1                             (I) vehicular access to the prop-

2                             erty;

3                             (II) access to, and use of, a dock

4                             for the property; and

5                             (III) access to, and use of, all

6                             boathouses, ramps, retaining walls,

7                             and other improvements for which ac-

8                             cess is provided in the permit for use

9                             of the property as of the date of en-

10                             actment of this Act.

11                             (B) PERIOD FOR CONVEYANCE.—The Sec-

12                             retary shall convey to a permittee a property

13                             pursuant to subparagraph (A) during the pe-

14                             riod—

15                             (i) beginning on the date of enactment

16                             of this Act; and

17                             (ii) ending on the date that is 2 years

18                             after that date of enactment.

19                             (4) TRANSFERS TO DEPARTMENT.—

20                             (A) FAILURE TO PURCHASE.—If a per-

21                             mittee fails to exercise the option to purchase a

22                             property under paragraph (3) by the date that

23                             is 2 years after the date of enactment of this

24                             Act, the Secretary shall transfer the property to

25                             the Department, without cost.

1                             (B) CERTAIN OTHER LAND.—Effective be-  
2                             ginning on the date that is 2 years after the  
3                             date of enactment of this Act, the Secretary  
4                             shall transfer to the Department, without cost,  
5                             land managed by the Department as of the date  
6                             of enactment, on which no cabin is located.

7                             (e) OIL, GAS, MINERAL, AND OTHER OUTSTANDING  
8                             RIGHTS.—Each conveyance to a permittee, and each  
9                             transfer to the Department, pursuant to subsection (b)  
10                            shall be made subject to—

11                             (1) oil, gas, and other mineral rights reserved  
12                             of record, as of the date of enactment of this Act,  
13                             by, or in favor of, a third party; and

14                             (2) any permit, license, lease, right-of-use, or  
15                             right-of-way of record in, on, over, or across the ap-  
16                             plicable property or land that is outstanding to a  
17                             third party as of the date of enactment of this Act.

18                             (d) LIABILITY; TAKING.—

19                             (1) LIABILITY.—The United States shall not be  
20                             liable for flood damage to the personal property of  
21                             a permittee or for damages arising out of any act,  
22                             omission, or occurrence relating to a lot to which a  
23                             permit applies, other than for damages caused by an  
24                             act or omission of the United States or an employee,

1 agent, or contractor of the United States before the  
2 date of enactment of this Act.

3           (2) TAKING.—Any temporary flooding or flood  
4 damage to the personal property of a permittee shall  
5 not be considered to be a taking by the United  
6 States.

7           (e) REQUIREMENTS RELATING TO CONVEYANCES  
8 AND TRANSFERS.—

9           (1) INTERIM REQUIREMENTS.—During the pe-  
10 riod beginning on the date of enactment of this Act  
11 and ending on the date of conveyance or transfer of  
12 a property or land, the provisions of the document  
13 entitled “Management Agreement between the Bu-  
14 reau of Reclamation, et al., for the Development,  
15 Management, Operation, and Maintenance of Lands  
16 and Recreation Facilities at Dickinson Reservoir”  
17 that are applicable to the property or land shall re-  
18 main in force and effect.

19           (2) LEGAL DESCRIPTIONS.—Not later than 180  
20 days after the date of enactment of this Act, the  
21 Secretary, in consultation with the Department,  
22 shall provide to the Department a legal description  
23 of all properties and land that may be conveyed or  
24 transferred pursuant to this section.

1                             (3) RESTRICTION ON CONVEYANCE.—Effective  
2 beginning on the date of enactment of this Act—

3                             (A) a permittee may not build any new  
4 permanent structure below an elevation of  
5 2,430 feet; and

6                             (B) if a permittee builds a structure de-  
7 scribed in subparagraph (A), the property of  
8 the permittee shall revert to the Department.

9                             (f) PROCEEDS FROM SALES OF FEDERAL LAND.—

10 Any revenues from a sale of Federal land pursuant to this  
11 section shall be made available to the Secretary, without  
12 further appropriation, for—

13                             (1) the costs to the Secretary of carrying out  
14 this section; and

15                             (2) deferred maintenance activities relating to  
16 the operation of the dam in the Dickinson Reservoir.

17 **SECTION 1. DEFINITIONS.**

18                             *In this Act:*

19                             (1) DEPARTMENT.—The term “Department”  
20 means Dickinson Parks & Recreation in Dickinson,  
21 North Dakota.

22                             (2) DICKINSON RESERVOIR.—The term “Dickin-  
23 son Reservoir” means the Dickinson Reservoir con-  
24 structed as part of the Dickinson Unit, Heart Divi-  
25 sion, Pick-Sloan Missouri Basin Program, as author-

1       ized by section 9 of the Act of December 22, 1944  
2       (commonly known as the “Flood Control Act of  
3       1944”) (58 Stat. 891, chapter 665).

4                     (3) *GAME AND FISH HEADQUARTERS.*—The term  
5       “game and fish headquarters” means the approxi-  
6       mately 10 acres of land depicted as “Game and Fish  
7       Headquarters” on the Map.

8                     (4) *MANAGEMENT AGREEMENT.*—The term  
9       “Management Agreement” means the management  
10      agreement entitled “Management Agreement between  
11      the Bureau of Reclamation, et al., for the Develop-  
12      ment, Management, Operation, and Maintenance of  
13      Lands and Recreation Facilities at Dickinson Res-  
14      ervoir”, MA No. 07AG602222, Modification No. 1 and  
15      dated March 15, 2017.

16                     (5) *MAP.*—The term “Map” means the map pre-  
17      pared by the Bureau of Reclamation, entitled “Dick-  
18      inson Reservoir”, and dated May 2018.

19                     (6) *PERMITTED CABIN LAND.*—The term “per-  
20      mitted cabin land” means the land depicted as “Per-  
21      mitted Cabin Land” on the Map.

22                     (7) *PROPERTY.*—The term “property” means  
23      any cabin site located on permitted cabin land for  
24      which a permit is in effect on the date of enactment  
25      of this Act.

1                   (8) *RECREATION LAND.*—The term “recreation  
2       *land*” means the land depicted as “Recreation and  
3       *Public Purpose Lands*” on the Map.

4                   (9) *SECRETARY.*—The term “Secretary” means  
5       *the Secretary of the Interior, acting through the Com-*  
6       *missioner of Reclamation.*

7                   (10) *STATE.*—The term “State” means the State  
8       *of North Dakota, acting through the North Dakota*  
9       *Game and Fish Department.*

10 **SEC. 2. CONVEYANCES TO DICKINSON DEPARTMENT OF**  
11                   **PARKS AND RECREATION.**

12                   (a) **CONVEYANCES TO DICKINSON DEPARTMENT OF**  
13                   **PARKS AND RECREATION.**—

14                   (1) *IN GENERAL.*—Subject to the management re-  
15       *quirements of paragraph (3) and the easements and*  
16       *reservations under section 4, not later than 5 years*  
17       *after the date of enactment of this Act, the Secretary*  
18       *shall convey to the Department all right, title, and in-*  
19       *terest of the United States in and to—*

- 20                   (A) *the recreation land; and*  
21                   (B) *the permitted cabin land.*

22                   (2) **COSTS.**—

23                   (A) *IN GENERAL.*—Except as provided in  
24       *subparagraph (B), the Secretary shall convey the*  
25       *land described in paragraph (1) at no cost.*

1                           (B) *TITLE TRANSFER; LAND SURVEYS.*—As  
2                           *a condition of the conveyances under paragraph*  
3                           *(1), the Department shall agree to pay all survey*  
4                           *and other administrative costs necessary for the*  
5                           *preparation and completion of any patents for,*  
6                           *and transfers of title to, the land described in*  
7                           *paragraph (1).*

8                           (3) *MANAGEMENT.*—

9                           (A) *RECREATION LAND.*—*The Department*  
10                          *shall manage the recreation land conveyed under*  
11                          *paragraph (1)—*

12                          (i) *for recreation and public purposes*  
13                          *consistent with the Act of June 14, 1926*  
14                          *(commonly known as the “Recreation and*  
15                          *Public Purposes Act”) (44 Stat. 741, chap-*  
16                          *ter 578; 43 U.S.C. 869 et seq.);*

17                          (ii) *for public access;*

18                          (iii) *for fish and wildlife habitat; or*

19                          (iv) *to preserve the natural character*  
20                          *of the recreation land.*

21                          (B) *PERMITTED CABIN LAND.*—*The Depart-*  
22                          *ment shall manage the permitted cabin land con-*  
23                          *veyed under paragraph (1)—*

1                             (i) for cabins or recreational residences  
2                             in existence as of the date of enactment of  
3                             this Act; or

4                             (ii) for any of the recreation land  
5                             management purposes described in subpara-  
6                             graph (A).

7                     (4) *HAYING AND GRAZING.*—With respect to  
8                     recreation land conveyed under paragraph (1) that is  
9                     used for haying or grazing authorized by the Manage-  
10                     ment Agreement as of the date of enactment of this  
11                     Act, the Department may continue to permit haying  
12                     and grazing in a manner that is permissible under  
13                     the 1 or more haying or grazing contracts in effect as  
14                     of the date of enactment of this Act.

15                     (b) *REVERSION.*—If a parcel of land conveyed under  
16                     subparagraph (A) or (B) of subsection (a)(1) is used in a  
17                     manner that is inconsistent with the requirements described  
18                     in subparagraph (A) or (B), respectively, of subsection  
19                     (a)(3), the parcel of land shall, at the discretion of the Sec-  
20                     retary, revert to the United States.

21                     (c) *SALE OF PERMITTED CABIN LAND BY DEPART-  
22                     MENT.*—

23                     (1) *IN GENERAL.*—If the Department sells any  
24                     parcel of permitted cabin land conveyed under sub-  
25                     section (a)(1)(B), the parcel shall be sold at fair mar-

1       *ket value, as determined by a third-party appraiser*  
2       *in accordance with the Uniform Standards of Profes-*  
3       *sional Appraisal Practice, subject to paragraph (2).*

4           (2) *IMPROVEMENTS.—For purposes of an ap-*  
5       *praisal conducted under paragraph (1), any improve-*  
6       *ments on the permitted cabin land made by the per-*  
7       *mit holder shall not be included in the appraised*  
8       *value of the land.*

9           (3) *PROCEEDS FROM THE SALE OF LAND BY THE*  
10      *DEPARTMENT.—If the Department sells a parcel of*  
11      *permitted cabin land conveyed under subsection*  
12      *(a)(1)(B), the Department shall pay to the Secretary*  
13      *the amount of any proceeds of the sale that exceed the*  
14      *costs of preparing the sale by the Department.*

15           (d) *AVAILABILITY OF FUNDS TO THE SECRETARY.—*  
16      *Any amounts paid to the Secretary for land conveyed by*  
17      *the Secretary under this Act shall be made available to the*  
18      *Secretary, without further appropriation, for activities re-*  
19      *lating to the operation of the Dickinson Dam and Reservoir.*

20      **SEC. 3. CONVEYANCE OF GAME AND FISH HEADQUARTERS**

21           **TO THE STATE.**

22           (a) *CONVEYANCE OF GAME AND FISH HEAD-*  
23      *QUARTERS.—Not later than 5 years after the date of enact-*  
24      *ment of this Act, the Secretary shall convey to the State*  
25      *all right, title, and interest of the United States in and to*

1   *the game and fish headquarters, on the condition that the*  
2   *game and fish headquarters continue to be used as a game*  
3   *and fish headquarters or substantially similar purposes.*

4           (b) *REVERSION.—If land conveyed under subsection*  
5   *(a) is used in a manner that is inconsistent with the re-*  
6   *quirements described in that subsection, the land shall, at*  
7   *the discretion of the Secretary, revert to the United States.*

8   **SEC. 4. RESERVATIONS, EASEMENTS, AND OTHER OUT-**

9                 **STANDING RIGHTS.**

10          (a) *IN GENERAL.—Each conveyance to the Depart-*  
11   *ment or the State pursuant to this Act shall be made subject*  
12   *to—*

- 13                 (1) *valid existing rights;*  
14                 (2) *operational requirements of the Pick-Sloan*  
15   *Missouri River Basin Program, as authorized by sec-*  
16   *tion 9 of the Act of December 22, 1944 (commonly*  
17   *known as the “Flood Control Act of 1944”) (58 Stat.*  
18   *891, chapter 665), including the Dickinson Reservoir;*  
19                 (3) *any flowage easement reserved by the United*  
20   *States to allow full operation of Dickinson Reservoir*  
21   *for authorized purposes;*  
22                 (4) *reservations described in the Management*  
23   *Agreement;*

1                   (5) oil, gas, and other mineral rights reserved of  
2 record, as of the date of enactment of this Act, by, or  
3 in favor of, the United States or a third party;

4                   (6) any permit, license, lease, right-of-use, flow-  
5 age easement, or right-of-way of record in, on, over,  
6 or across the applicable property or Federal land,  
7 whether owned by the United States or a third party,  
8 as of the date of enactment of this Act;

9                   (7) a deed restriction that prohibits building any  
10 new permanent structure on property below an ele-  
11 vation of 2,430.6 feet; and

12                   (8) the granting of applicable easements for—

13                   (A) vehicular access to the property; and

14                   (B) access to, and use of, all docks, boat-  
15 houses, ramps, retaining walls, and other im-  
16 provements for which access is provided in the  
17 permit for use of the property as of the date of  
18 enactment of this Act.

19 (b) *LIABILITY; TAKING.*—

20                   (1) *LIABILITY.*—The United States shall not be  
21 liable for flood damage to a property subject to a per-  
22 mit, the Department, or the State, or for damages  
23 arising out of any act, omission, or occurrence relat-  
24 ing to a permit holder, the Department, or the State,  
25 other than for damages caused by an act or omission

1       *of the United States or an employee, agent, or con-*  
2       *tractor of the United States before the date of enact-*  
3       *ment of this Act.*

4           (2) *TAKING.—Any temporary flooding or flood*  
5       *damage to the property of a permit holder, the De-*  
6       *partment, or the State, shall not be considered to be*  
7       *a taking by the United States.*

8 **SEC. 5. INTERIM REQUIREMENTS.**

9       *During the period beginning on the date of enactment*  
10 *of this Act and ending on the date of conveyance of a prop-*  
11 *erty or parcel of land under this Act, the provisions of the*  
12 *Management Agreement that are applicable to the property*  
13 *or land, or to leases between the State and the Secretary,*  
14 *and any applicable permits, shall remain in force and ef-*  
15 *fect.*

**Calendar No. 533**

115<sup>TH</sup> CONGRESS  
2D SESSION  
**S. 440**

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**A BILL**

To establish a procedure for the conveyance of certain Federal property around the Dickinson Reservoir in the State of North Dakota.

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JULY 30, 2018

Reported with an amendment